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REMARKS

Claims 1-24 are pending in the present application. In the Office Action mailed June 25, 2003, the Examiner rejected claims 1-24 under 35 U.S.C. §102(e) as being anticipated by Canfield, II et al. (USP 5,897,498). Additionally, claims 1-24 are provisionally rejected under the judicially created doctrine of nonstatutory double patenting over claims 1-44 of Application No. 09/199,506.

Background

Canfield, II et al. was first made of record in the Office Action of February 3, 2003. However, the reference was not applied to the claimed invention until after Applicant overcame all previous rejections – which were obviousness-type rejections under §103(a). Now the Examiner is rejecting each and every claim as anticipated by Canfield, II et al. – a previously known reference. However, “[i]n rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command.” 37 CFR 1.104(c). Therefore, Applicant is confused as to how the Examiner can now present a rejection under §102(c) when the reference previously considered by the Examiner to be the “best” reference was presented as a rejection under §103(a). This application is in condition for allowance as indicated when Applicant overcame the last §103 rejection.

Additionally, Applicant acknowledges the Examiner's duty to perform a thorough search and examination as outlined in MPEP §904.01; however, Applicant also wishes to remind the Examiner that it is also the Examiner's duty to avoid delay in prosecution and unreasonably forestall resolution of applications. MPEP §904.03 is clear that applying multiple references is to be avoided because it “adds to the burden and cost of prosecution and should therefore be avoided.” Similarly, unnecessary Office Actions, i.e. applying a reference that was previously considered insufficient to substantiate a rejection, should be avoided because such an Office Action adds nothing but burden and cost to prosecution. It is noted that this application has been pending since December 29, 1999.

Rejection Under §102(e)

To substantiate the current rejection, the Examiner has ignored explicit elements of the claims. The Examiner has ignored the fundamental differences in function and purpose between the claimed invention and Canfield, II et al. For example, Canfield, II et al. teaches an “ultrasound diagnostic imaging system with electronic message communications capability.” Title of Canfield, II et al. On the other hand, as will be addressed in detail, the independent

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claims specifically call for "an in-field product...that is not readily capable of direct communications." See claim 1. Therefore, while the very focus and purpose of Canfield, II et al. is a system where the in-field product, i.e. an ultrasound system, is capable of direct communications, the claimed invention is directed to the exact opposite purpose. That is, the claimed invention is directed to a system to allow remote communications, servicing and the like, when the in-field product is not readily capable of direct communications.

Nevertheless, the Examiner rejected each and every claim as anticipated by Canfield, II et al. However, to anticipate a claim, the reference must teach each and every element of the claim. See MPEP §2131. In this case, there are numerous distinctions between the current invention and the art cited by the Examiner.

Regarding claim 1, the Examiner asserted that column 8, lines 5-57 of Canfield, II et al. discloses "at least one on-line center having access to service software at a centralized facility so as to service in-field product remotely." The cited section, while lengthy, does not teach service software at all, let alone service software to service in-field product remotely. Rather the cited section teaches a system for electronic messaging. Specifically, the section teaches that "each ultrasound system has its own unique electronic message address for sending and receipt of electronic messages." Col. 8, lns. 35-37. Furthermore, "[w]ith each ultrasound system having its own electronic mailbox, the manufacturer can quickly and easily transmit bulletins about the system directly to the system mailbox." Col. 8, lns. 27-29. Nowhere in the cited section, or in all of Canfield, II et al., is "service software" of any kind taught. Therefore, while Canfield, II et al. teaches the transmission of information such as a performance log and suggestions regarding the performance of the system, Canfield, II et al. does not teach "service software...so as to service in-field product remotely."

Next, the Examiner asserted that column 2, lines 52-63 teaches "an in-field product ...that is not readily capable of direct communication with the on-line center" and "at least one portable service interface operable with the in-field product." However, the citation merely provides a general operational background of an ultrasound system and fails to address any element of the claim other than an in-field product, i.e. ultrasound system. Continuing into column 3, which the Examiner did not cite, Canfield, II et al. teaches that "[t]he ultrasound system 10 includes a HyperText Transfer Protocol (HTTP) server 30." Col. 3, lns. 19-20, emphasis added. The integrated HTTP server allows the ultrasound system to directly communicate reports to a "personal computer, terminal, or workstation at a remote location." Col. 3, lns. 23-24. Therefore, Canfield, II et al. teaches directly away from an in-field product that is

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not readily capable of direct communication with the on-line center and a portable service interface operable with the in-field product by teaching that the ultrasound system have integrated means for internet communications.

For all these reasons, Applicant believes claim 1 is patentably distinct from the cited art. Claims 2-9 are also in condition for allowance pursuant to the chain of dependency. However, Applicant will highlight some of the numerous elements that were not addressed by the Examiner and further distinguish the claimed invention from the cited art.

Regarding claim 3, the Examiner cited column 8, lines 5-37 as teaching the claimed invention. First, as previously shown, Canfield, II et al. does not teach service software. Therefore, Canfield, II et al. does not teach that the service software be designed for utilization with "a wide variety of medical image scanners." Second, Canfield, II et al. does not teach "a wide variety of medical image scanners" but a system for use with only ultrasound type medical image scanners. The Examiner is reminded that to sustain a rejection under §102, the reference must teach each and every element of the claim. MPEP §2131. Third, claim 3 is specific that the on-line center "automatically downloads the selected service software." Canfield, II et al. teaches away from automated downloads by stating that an operator may use a browser to access system preset data or that "the operator may download the custom preset data directly to scan parameter storage." Col. 7, lns. 30-36. Simply, Canfield, II et al. teaches that any downloading requires an operator to effectuate the download. Therefore, Canfield, II et al. teaches away from automated downloads. For all of the above reasons, claim 3 is patentably distinct from the art of record.

Regarding claim 5, the Examiner cited column 8, lines 15-27 as teaching that data accessed from the on-line center includes at least one of a configuration file, a golden file, a protocol, and a software program. However, the citation merely teaches electronic messaging to transmit a system error log, status, and configuration, and to automatically send the error log to the manufacturer or to a repairman. This is not the present invention. The cited section does not teach accessing data from the on-line center, but merely sends data to an on-line center. The Examiner is again reminded that to anticipate a claim, the reference must teach each and every element of the claim. See MPEP §2131. As such, claim 5 is patentably distinct over the cited art.

Regarding claim 8, the Examiner contends that column 3, lines 20-67 teaches that "the portable service interface is a laptop computer having loaded therein remote resource communications software to automatically communicate with the on-line center and transfer data therebetween." However, the sentence preceding the Examiner's lengthy citation teaches that "the ultrasound system 10 includes a HyperText Transfer (HTTP) server 30." Col. 3, lns. 19-20.

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Canfield, II et al. then teaches that "[t]he server 30 is connected to the modem 32." Therefore, the ultrasound system is has an integrated server for communications with the on-line center and data transfer therebetween and does not teach a laptop computer. Claim 8 is also patentably distinct over the cited art.

Regarding claim 10, the Examiner rejected the claim by citing "see rejection of claim 1, supra." Accordingly, Applicant incorporates herein the relevant remarks with respect to claim 1. However, claim 10 is different from claim 1 and requires its own analysis. Applicant hereby requests such examination to complete the record.

The only element of claim 10 specifically addressed by the Examiner is "accessing data from the in-field product with the portable service interface." To reject this element the Examiner cites column 8, lines 15-27, which teaches that "[t]he electronic messaging system can be configured to automatically capture system information when a problem occurs, such as the system error log, status and configuration, and to automatically send the error log to the manufacturer or repairman at the time of the problem." Nowhere does it teach "accessing data from the in-field product with the portable service interface." As previously shown, Canfield, II et al. does not teach a portable service interface and; therefore, does not teach that the portable service interface accesses data from the in-field product. The Examiner seems to be repeatedly ignoring that the claims explicitly call for a portable service interface. Instead the Examiner is citing sections that teach sending or receiving information while ignoring the specifics of the communication. Once more, the Examiner is reminded that to anticipate a claim, the reference must teach each and every element of the claim, without exception. See MPEP §2131. As such, Applicant believes claim 10 is patentably distinct over the cited art. Furthermore, claims 11-20 are in condition for allowance pursuant to the chain of dependency.

Regarding claim 21, the Examiner rejected the very first elements of the claim by citing column 2, lines 52-63. Specifically, the Examiner asserted that the citation teaches "[a] method of servicing an in-field product not readily capable of direct communication with a remote on-line center comprising: providing a portable service interface having software for communication with an on-line center." However, the cited section teaches nothing of the like. The cited section actually states:

Referring to FIGS. 1 and 3, an ultrasonic diagnostic imaging system 10 constructed in accordance with the principles of the present invention is shown. The ultrasound system 10 includes a number of conventional components, including a scanhead 14 with an ultrasonic transducer 12 which transmits

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ultrasonic waves into the body of a patient, receives echoes returning from the interaction of the transmitted waves with internal organs and tissue of the body, and converts the received echoes into electrical echo signals. The electrical echo signals are appropriately delayed and combined by a beamformer 16 to form coherent beams of echo information.

Col. 2, lns. 52-63.

The cited section describes an ultrasound system that is readily capable of direct communications. The Examiner has ignored the fundamental differences in the claimed invention and Canfield, II et al. as well as explicitly elements of the claims. The cited section does not teach a portable service interface of any kind, let alone "a portable service interface having software for communication with an on-line center." Should the Examiner disagree, Applicant requests a pin-point citation to explicitly show where, in all of Canfield, II et al., "a portable service interface having software for communication with an on-line center" is disclosed.

Claim 21 also calls for the portable service interface to perform a multitude of functions. The claim specifically calls for the portable service interface to (1) interface the in-field product with the on-line center through the portable service interface to conduct a diagnostic evaluation, (2) download information to the in-field product from the on-line center through the portable service interface, and (3) display one of the diagnostic evaluation and downloaded information on the portable service interface. To reject these elements, the Examiner cited various portions of column 8 of Canfield, II et al. However, as previously shown, column 8 teaches an electronic messaging system incorporating an ultrasound system. The ultrasound system can directly communicate with other ultrasound system as well as other external systems, such as a manufacturer.

Assuming arguendo that column 8 teaches ultrasound system operations that involve interfacing, downloading and displaying, such is not the claimed invention. First, as previously addressed, claim 21 is clear that a portable service interface, not an ultrasound system, performs the operations of interfacing, downloading and displaying. However, should the Examiner contend that an ultrasound system could be considered a portable service interface, Canfield, II et al. fails to teach an in-field product operable with the portable service interface. Second, claim 21 is explicit that the operations of interfacing, downloading and displaying are performed in a very particular manner. That is, the interfacing is an interfacing between the in-field product with the on-line center through the portable service interface, the downloading is downloading information to the in-field product from the on-line center through the portable service interface, and the displaying is a displaying of one of the diagnostic evaluation and the downloaded information.

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Furthermore, the displaying is performed by the portable service interface. Canfield, II et al. makes no such teaching or suggestion. Therefore, claim 21 is patentably distinct from the cited art. Additionally, claims 22-24 are in condition for allowance pursuant to the chain of dependency.

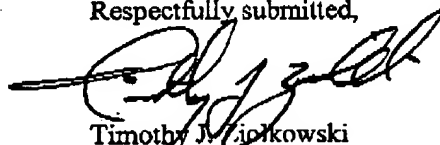
Provisional Double Patenting Rejection

Applicant notes that the Examiner provisionally rejected claims 1-24 under the judicially created doctrine of double patenting over claims 1-44 of Application No. 09/199,506. However, due to the provisional nature of the rejection, Applicant is not in a position to provide remarks with respect to the provisional rejection. MPEP §804(I)(B) states that "[i]f the 'provisional' double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent." Therefore, since all other rejections are traversed, Applicant requests withdrawal of the provisional double patenting rejection and a timely issuance of a Notice of Allowance. However, should the 09/199,506 application issue prior to the issuance of the claimed invention and the provisional double patenting rejection ripens into a double patenting rejection, Applicant will readily address the applicability of the rejection at that time.

Therefore, in light of the foregoing, Applicant respectfully believes that the present application is in condition for allowance. As a result, Applicant respectfully requests timely issuance of a Notice of Allowance for claims 1-24.

Applicant appreciates the Examiner's consideration of these Remarks and cordially invites the Examiner to call the undersigned, should the Examiner consider any matters unresolved or require explanation.

Respectfully submitted,



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